

Remarks.

The rejection of claims 1,2,6-11 and 40-45 over Sumimoto under 35 USC 102(e) is respectfully traversed.

The reference requires the presence of a basic substance, that is to say Sumimoto deliberately moves the indicator into the acid phase PRIOR to the sterilization phase. This is precisely the opposite of what the present invention requires as clearly set forth in the claims as amended by the previous response. The presence of a basic substance would mask the effect achieved by the present invention. Sumimoto must therefore be withdrawn as a reference and thus the rejection falls.

The rejection of claims 1-3 and 5-7 over Ignacio under 35 USC 102(e) is respectfully traversed.

While the Examiner is correct that an intended use does not constitute a patentable distinction for a device, this principle is inapplicable here. Not only does Ignacio not teach Ethylene Oxide sterilization, but the nature of applicant's activator is defined in the body of claim 1 part (b) thus does not fall within the exclusion cited by the examiner. Thus the reference and the basis of rejection must be withdrawn.

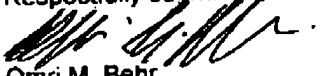
The rejection of Claim 4 over (either? sic) Ignacio in view of Kipke under 35 USC 103 is traversed for the reasons given above.

Ignacio is not available as a primary reference. Thus citation of the secondary reference to Kipke adds nothing. Since the basis of combination of references to support an obviousness rejection requires suggestion of using a secondary reference to complete the teaching of a primary reference, and such suggestion is not present, the citation of these to references in combination is unsound and the rejection must be withdrawn.

In view of the foregoing, it would appear that there is no tenable ground for rejection of any of the claims in the present application, and their prompt passage to issue is respectfully solicited.

This is to certify that the foregoing paper was transmitted by telefax to the Commissioner for Patents at 703 872 9306 on December 14th 2004.

Respectfully submitted


Omri M. Behr
Reg # 22940 Cust. # 47375

The Behr Office
325 Pierson Avenue
Edison NJ 08837-3123
Ph: 732 603 6006
Fx: 732 494 6258
Email: Omrib@aol.com